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SUPREME COURT OF THE UNITED STATES.

No. 530. 85

EDWARD HARWOOD, D. M. MARCH, WILLIAM S. SAMPSON, SAMUEL BOGGS, ROBERT HAMLIN, JACOB VOSE, JAMES M. PRICE, THOMPSON NEARES, DAVID HUSTON, JOHN BOTS, JAMES D. LEHMER, R. M. MOORE, MOSES WHITE, WILLIAM GOODALL, B. HAGER, J. L. WAYNE, JOHN L. VAETNER, APPELLANTS,

vs.

THE CINCINNATI AND CHICAGO AIR-LINE RAILROAD COMPANY, JOHN BRANDT, F. SCHUCHARDT, JOSEPH E. YOUNG, M. L. BUNDY, S. MEREDITH, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED MARCH 24, 1871.

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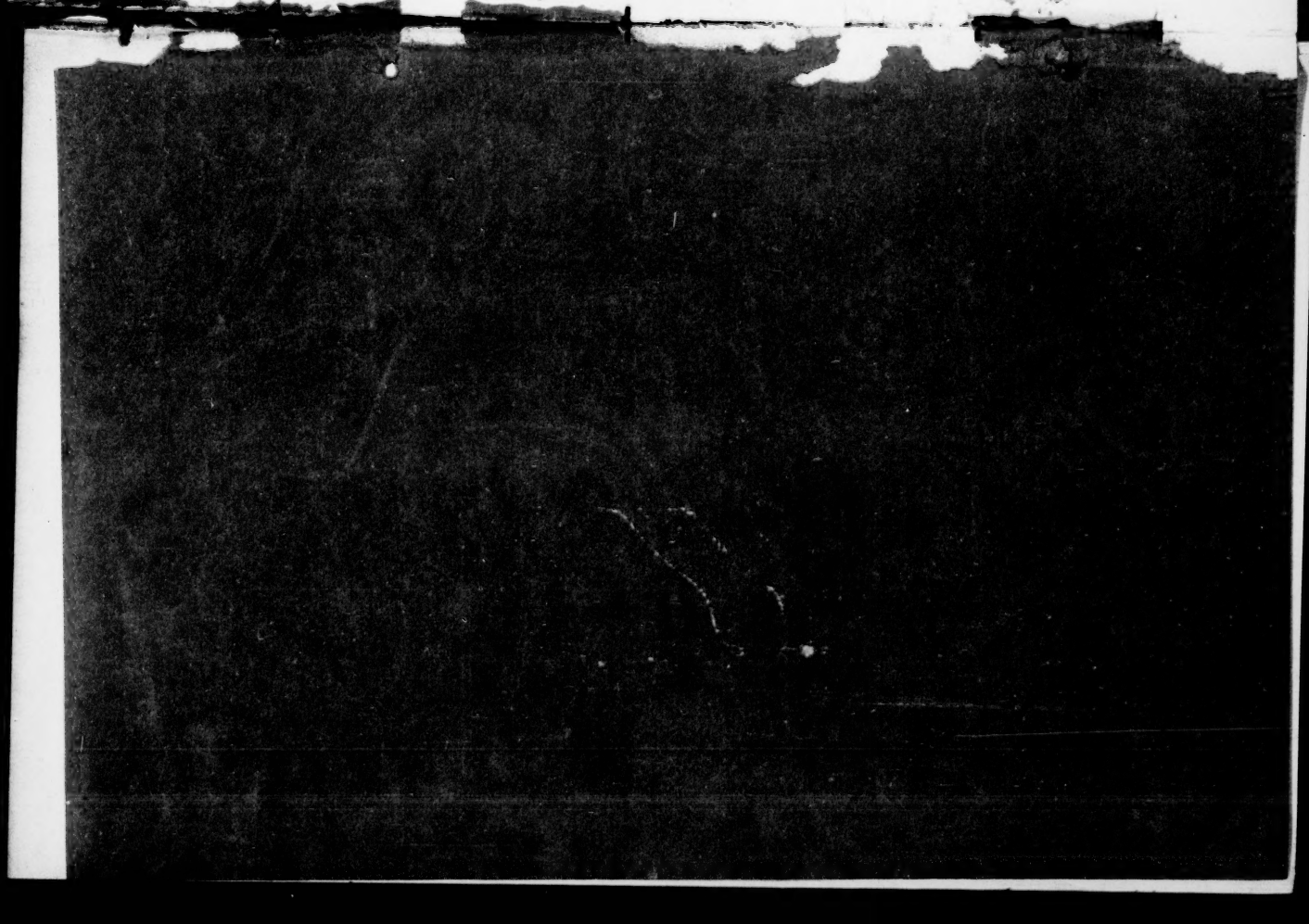

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1 Pleas of the circuit court of the United States in and for the 7th judicial circuit and district of Indiana, begun and holden in the United States court-house, in the city of Indianapolis, at said district, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and sixty-five, before the Honorable David Davis, the justice of the Supreme Court of the United States assigned to the circuit aforesaid.

EDWARD HARWOOD, DAVID M. MARCH, W'M S. Sampson, Samuel Boggs, Robert Hamlin, Jacob Vore, James M. Price, Thompson Neares, David Huston, John Bots, James D. Lehmer, Robert M. Moore, Moses White, William Goodall, Barton Hager, Jacob L. Wayne, and John L. Valtuer

v.

THE CINCINNATI AND CHICAGO AIR-LINE RAILroad Company, John Brandt, Frederick Schuchardt, Joseph E. Young, Martin L. Bundy, Solomon Meredith, William D. Judson, Amos Tenney, George B. Ripley, Joseph B. Vaunan, Henry Morgan, Urial A. Murdock, John H. Thompson, Charles K. Hamilton, Pierre Chateau, The Cincinnati and Chicago Railroad Co., The Chicago & Great Eastern Railway Co. } Chancery.

2 Be it remembered that, on the 25 day of December, A. D. 1865, the complainants herein, by Messrs. Hendricks, Hord, and Hendricks, their solicitors, filed in the office of the clerk of said court their bill in chancery in the cause above entitled, which is in the words and figures following, to wit. (See amended bill in this record filed 28th day of May, 1868.)

And thereupon was issued out of the office of the clerk of said court a subpœna in chancery, in the above entitled cause, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Indiana:*

The President of the United States to the marshal of the district of Indiana, greeting:

You are hereby commanded to summon the Cincinnati and Chicago Air-Line Railroad Company, John Brandt, Frederick Schuchardt, William B. Judson, Amos Tenney, George B. Ripley, Joseph B. Varnum, Henry Morgan, John H. Thompson, Urial A. Murdock, Charles K. Hamilton, and Piere Chateau, citizens of and residents in the State of Indiana, if they be found in your district, to be and appear in the circuit court of the United States for the district of Indiana aforesaid, at Indianapolis, on the first Tuesday in May next, to answer a cer-

3 tain bill in chancery, filed and exhibited in said court against them, by Edward Harwood, Robert M. Moore, David M. March, William L. Sampson, Samuel Boggs, Robert Hamlin, Jacob Vore, James M. Price, Thompson Neare, David Huston, John Bates, James D. Lehmer, Moses White, William Goodall, Barton Hager, Jacob L. Wayne, and John L. Voltier, citizens of and residents in the State of Ohio. Hereof you will not fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable S. P. Chase, Chief Justice of the United States, this 29th day of December, A. D. 1865, and in the ninetieth year of the indep'ence of the United States of America.

[SEAL.] Attest: J. D. HOWLAND, *Clerk.*

[Int. rev. 50 c'ts stamp.]

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday *at* February, 1866, otherwise the said bill may be taken pro confesso.

J. D. HOWLAND, *Clerk.*

And afterwards, to wit, on the 13th day of March, 1866, said sub pœna was returned into court, with the following returns endorsed thereon:

JANUARY 28TH, 1866.

4 I served the within subpœna as commanded, by read to, and copy left with John Brandt.

BEN. SPOONER,
U. S. Marshal,
By W. ZIMMERMAN,
Deputy.

I served the within subpœna as commanded, upon the Cincinnati and Chicago Air-Line Railroad Company, on this 12th day of March, 1866, by leaving a copy thereof with Joseph E. Young; the vice-president of said company not found in my district.

BENJ. SPOONER,
U. S. Marshal,
By I. S. BIGELOW,
Deputy.

And afterwards, to wit, at the November term of said court, on the 10th day of November, A. D. 1866, before the Honorable David McDonald, one of the judges of said court, the following proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by S. E. Perkins, esq., their solicitor, and the bill filed in this cause having been lost, leave is granted to the complainants to file a bill of complaint in substitution therefor, by the first Monday in February next, and the cause is continued.

And afterwards, to wit, on the 30th day of January, A. D. 1867, during vacation, the plaintiff herein, by Messrs. Perkins, Hendricks, Hord and Hendricks, their solicitors, file their substituted bill herein in the amended bill, in this record filed on the 28th day of May, 1868.

5 And afterwards, to wit, at the May term of said court, on the 25th day of May, A. D. 1867, before the Honorable S. H. Treat, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

On motion of the complainants, the defendants are ruled to answer by Monday morning next.

And afterwards, to wit, at the May term of said court, on the 3d day

of June, A. D. 1866, before the Honorable David Davis, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Mr. Hendricks, their solicitor, and upon his motion, the marshal has leave to correct his return of the service herein upon the company defendant. And now comes also John Brandt, one of said defendants, and files his affidavit herein, and thereupon moves the court to dismiss the said bill of complaint as to him, the said Brandt.

And afterwards, to wit, at the May term of said court, on the 7th day of June, before the Honorable David Davis, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Now comes the parties, by their respective solicitors, said defendants appearing to their motion herein. And thereupon it is ordered
6 by the court that the leave heretofore granted on motion of the complainants, that the marshal do correct his return to the writ of subpœna in this cause, is extended to the next term of the court; that the complainants have leave to amend their bill of complaint; that alias subpena in chancery do issue, and that this cause is continued.

And afterwards, to wit, on the 18th day of June, A. D. 1867, the complainants herein, by Messrs. Perkins, Hendricks, Hord and Hendricks, their solicitors, filed in the office of the clerk of said court their bill in chancery in the above-entitled cause, which is in the words and figures following, to wit. (See amended bill in this record, filed 28th day of May, A. D. 1868.)

And thereupon was issued out of the office of the clerk of said court a subpœna in chancery in the above-entitled cause, which is in the word' and figures following, to wit:

UNITED STATES OF AMERICA,
District of Indiana:

The President of the United States to the marshal of the district of Indiana, greeting:

You are hereby commanded to summon The Cincinnati and Chicago Air-line Railroad Company, The Chicago and Great Eastern Railway Company, John Brandt, Frederick Schuchardt, Joseph E. Young,
7 Martin L. Bundy, Solomon Meredith, William D. Judson, Amos Tenny, George B. Ripley, Joseph B. Varnam, Urial A. Murdock, John H. Thompson, Charles K. Hamilton, and Pierre Chateau, and The Cincinnati and Chicago Railroad Company, citizens of and residents in the State of Indiana, if they be found in your district, to be and appear in the circuit court of the United States for the district of Indiana as aforesaid, at Indianapolis, on the first Monday in August next, to answer a certain bill in chancery, filed and exhibited in said court against them, by Edward Harwood, David M. March, W'm S. Sampson, Samuel Boggs, Robert Hamlin, Jacob Vore, Ja's M. Price, Thompson Neare, David Huston, John Bots, James D. Lehman, Robert M. Moore, Moses White, William Goodall, Barton Hayne, Jacob L. Wayne, and John L. Valtier, citizens of and residents in the State of . Hereof they are not to fail, under the penalty of the law thence ensuing. And have you then and there this writ.

Witness the Honorable S. P. Chase, Chief Justice of the United

States, this 19th day of June, A. D. 1869, and in the 91st year of the independence of the United States of America.

[SEAL.] Attest: J. D. HOWLAND, *Clerk.*

8 MEMORANDUM.—The said defendants are required to enter their appearance in this suit, in the clerk's office of said court, on or before the first Monday of August, 1867; otherwise the said bill may be taken pro confesso.

J. D. HOWLAND, *Clerk.*

And afterwards, to wit, on the 27th day of January, A. D. 1868, said subpœna was returned into court, with the following returns endorsed thereon:

I do hereby certify that I served this writ on the *the* 13th day of July 1867, upon Joseph E. Young, vice-president of the Chicago and Great Eastern Railroad Company, by reading the same to him, and delivering to him two certified copies hereof; one for him, as vice-president of said road, and the other for himself individually.

BEN. SPOONER, *U. S. Marshal.*

AUG. 26, 1867.

I served the within subpœna as commanded, by leaving a copy of the same at the usual place of residence of Martin L. Bundy, and Oct. 14th, 1867, by reading to M. L. Bundy, as president of .

BEN. SPOONER, *U. S. Marshal,*
By H. N. BIGELOW, *Dep'ty.*

SEPT. 11TH, 1867.

I served the within subpœna by leaving a copy at the last
9 usual place of residence in this district of Solomon Meredith.

BEN. SPOONER, *U. S. Marshal,*
By DAVID POWELL, *Deputy.*

OCT. 10TH, 1867.

I served the within subpœna by reading to, and copy left with, S. C. Conover, superintendent south division Great Eastern Railway Co.

BEN. SPOONER, *U. S. Marshal,*
By I. S. BIGELOW, *Deputy.*

And afterwards, to wit, at the November term of said court, on the 8th day of November, A. D. 1867, before the Honorable David McDonald, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Now comes the Chicago and Great Eastern Railroad Company, Joseph E. Young, William D. Judson, Henry Morgan, Amos Tenney, and George B. Ripley, by Edward Walker, esq., and now enter their appearance to this action, and are requ'red to answer the complainants' bill of complaint on or before the first day of the next term of this court, and leave is given to the complainants to amend this bill, and this cause is continued.

And afterwards, to wit, at the May term of said court, on the 11th day of May, A. D. 1868, before the Honorable David McDonald, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

10 Comes the defendants, by counsel, and file their demurrer to the bill in the words following:

And afterwards, to wit, at the May term of said court, on the 25th day of May, A. D. 1868, before the Honorable David McDonald, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, and the court being sufficiently advised in the premises, do sustain the demurrer to the plaintiffs' bill of complaint herein; and thereupon leave is given the complainant to amend his bill in sixty days from date.

And afterwards, to wit, at the May term of said court, on the 28th day of May, A. D. 1868, before the Honorable David McDonald, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties by their respective solicitors, and the plaintiffs now file their amended bill in the words and figures following, to wit:

To the judge of the circuit court of the United States for the district of Indiana:

Edward Harwood, David M. March, W'm S. Sampson, Samuel Boggs, Robert Hamlin, Jacob Vore, James M. Price, Thompson Neares, David Huston, John Bots, James D. Lehman, Robert M. Moore, Moses White, William Goodall, Barton Hager, Jacob L. Wayne, John L. Valley,

11 citizens Ohio, except said Vore, who is of Indiana, who are, and at the time of the sale hereinafter mentioned were, stockholders in the Cincinnati and Chicago Railroad Company, said corporation being now disorganized and unable to sue, who sue for themselves and all others interested, bring this bill against the Cincinnati and Chicago Air-Line Railroad Company, a corporation existing in Indiana under the laws thereof, John Brandt, Frederick Schu'hardt, Joseph E. Young, citizens of Illinois; Martin L. Bundy, Solomon Meredith, of Indiana; William D. Judson, Amos Tenney, George B. Ripley, Joseph B. Varuan, Henry Morgan, Urial A. Murdock, John H. Thompson, and Charles K. Hamilton, of the State of New York; Pierre Chateau, ot Missouri, and the Cincinnati and Chicago Railroad Company, and the Chicago and Great Eastern *Rail* Railway *be*, organized in Indiana, Ohio, Illinois, and other States, and say that, heretofore, to wit, on the 25 day of February, 1852, the Newcastle and Richmond Railroad Company being in want of money, did issue three hundred bonds of one thousand dollars each, payable to order of George Carlisle, who has since died, and Joseph B. Varuan, at the office of the Ohio Life Insurance and Trust Company, New York, on the 25th of February, 1867, with interest at seven per cent., payable semi-annually, with coupons attached, payable at the same place.

12 Your orators further say that on the same day said company executed a trust mortgage to said Carlisle and Varnam to secure payment of said bonds and coupons upon all their existing and future acquired property, including the railroad bed, income, franchises.

Your orators further say that, afterwards, on or before the thirty-first day of August, 1854, the name of the Newcastle and Richmond Railroad Company was changed to the Cincinnati, Logansport and Chicago Railroad Company, which latter name was, in 1858, changed for that of Cincinnati and Chicago, &c., Railroad Company.

Your orators further show that, afterwards, to wit, on the first day of April, 1853, the said Cincinnati, Logansport, and Chicago, (or the Cincinnati and Chicago Railroad Company, as it appears to be called,) issued

a second set of bonds for the amount of five hundred thousand dollars, to raise money for the alleged purpose of extending said Richmond and Newcastle road to Logansport, Indiana; and, to secure said bonds, executed a second trust mortgage on said road from Richmond to Logansport, to Riggs, Hamilton and Carlisle, as trustees.

Your orators further represent that, on the 16th day of October, 1856, said Cincinnati and Chicago Railroad Company made a lease of
13 said road extending from Richmond, Indiana, to Logansport, for five years from the first of January, 1857, to John W. Wright & Co., said lessees, among other things, agreeing to keep down the interest on the mortgage bonds on said road, as specified in the lease, a copy of which is here made a part of this bill as Exhibit A.

Your orators further show that, afterwards, to wit, on the first day of April, 1853, the said Cincinnati, Logansport and Chicago Railway Company issued a second set of bonds to the amount of two hundred and fifty thousand pound' sterling; reserving fifty thousand to be issued thereafter, which were afterwards issued in dollar bonds, in the name of Cinc'ti & Chicago R. R. Co., amount 240,000 dollars, making in all in U. States currency (1,440,000) one million four hundred and forty thousand dollars, to raise money for the alleged purpose of extending said road from Richmond and New Castle to Logansport, Ind.; and to secure said bonds, a mortgage on said road from Richmond to Logansport, to Riggs, Hamilton, and Carlisle as trustees.

Your orators further say that, afterwards, to wit, on the 1st day of October, 1855, the said Cinc'ti & Chicago Railroad Company issued bonds known as the second mortgage, to the amount of 500,000
14 dollars to Joseph H. White and M. L. Bundy, trustees of the entire road from Richmond to Logansport.

Your orators further charge that, after the making of said lease, a conspiracy was entered into between said John W. Wright & Co., William D. Judson, George B. Ripley, Amos Tenney, Pierre Chateau, Urial A. Murdock, Frederick C. Schuchardt, John H Thompson, and Henry Morgan, and other holders of said second-mortgage bonds, for the purpose of getting possession of said railroad and defrauding the stockholders of the same. The means to be used, were, to let said road run down in credit, to pay no interest on said bonds as required by the lease, and otherwise to disregard the provisions of the same, whereby said bonds might be enforced against the road, and the same to be sold, and purchased in its bad credit and embarrassed condition, produced by these parties for the fraudulent purpose, for a nominal sum compared with its cost and real value. This fraudulent arrangement was carried out; the obligations of the lease were wilfully disregarded, by the lessees in possession, and with the means to do so, the interest was not paid on the bonds specified in the lease and bill. The road was ruined in credit, and the second mortgage above named became subject to foreclosure.

Your orators further show that, on or about the day of April,
15 1858, the said George Carlisle, one of said trustees, filed his bill in this court against the said Cincinnati and Chicago Railroad Company for the foreclosure of said second trust mortgage; and such proceedings were had therein that, on or about the day of 1860, a decree was entered ordering the sale of said road and all property and right covered by said mortgage, which sale was afterwards made, to wit, on the 28th day of March, 1860, by John H. Rea, commissioner, to Pierre Chateau, Uriah A. Murdock, Frederick Schuchardt, John H. Thompson, and Henry Morgan, citizens of the State of New York, for the sum of thirty thousand dollars, they being, as alleged, a committee appointed

by the above-named conspirators for the purpose, but said purchasers paid of said sum only twenty-five thousand dollars.

Your orators further show that, whilst said proceedings were pending and before the rendition of the decree, the parties to the conspiracy aforesaid, with the fraudulent intent aforesaid of securing to themselves the ownership of said railroad at a nominal price and depriving the stockholders of their property & interest therein, and to that end for the purpose of influencing the decree that the court should render in the case and controlling the sale of said road, and of securing the
16 same to themselves thereafter, entered into an agreement in writing, signed by the said Judson, Ripley, and Tenney for themselves and the said J. W. Wright & Co., and by the said Schu'hardt, Gebbard, and Murdock for themselves and said bondholders, a copy of which is attached to and made a part of this bill of complaint marked "General agreement, No. 1."

That, in further pursuance of the purposes aforesaid, the said parties did, afterwards, through their attorneys of record make a further agreement in writing, a copy of which is attached to and made a part of this bill of complaint marked "Agreement by the attorneys (No. 2.)"

Your orators further say that a still further pursuance of the fraudulent purposes aforesaid afterwards, to wit, on the 25th day of April, 1860, the said Gebhard, Murdock, Chatteau, Morgan, & Thompson made a power of attorney, appointing Warren Murdock the agent of the parties, to attend the sale of said road, which is attached to and made a part of this bill of complaint, marked "Power of attorney."

Your orators further show that Charles K. Hamilton, of the State of New York, was a party defendant to said proceedings in court and was opposing the plans and purposes aforesaid of said conspirators,
17 and that to satisfy his interests and to induce him to withdraw opposition to such decree as they might desire to obtain, on the 2d day of March, 1860, the said Judson Tenney and Ripley, for themselves and said J. W. Wright & Co., made their two contracts and agreements to and with said Charles K. Hamilton of that date, with the written approval thereto attached of said Schuchard and Gibhard, U. A. Murdock, & M. Morgan & Son, a copy of said agreements & approval are attached & made part of this bill of complaint, marked "Agreements 3 and 4" and "Approved."

Your orators further show that the decree of the court for the sale of said road was consented to by the, then president and attorney of the said railroad company without authority and in aid of the combinations to defraud the stockholders, and that he subsequently, in concert with directors of the company who were in the above conspiracy, by fraud, procured at an irregular meeting of seven, said attorney himself being one of them, of the thirteen direc'ors, a pretended ratification of his acts on the 22d day of March, 1860.

Your orators further show that, between the decree of sale and the sale, in furtherance of the fraudulent purpose of getting posses-
18 sion of the road for a nominal sum, the combination among the parties named, entered into a written agreement for the division of the spoils to be obtained at what they had determined should be a sham sale, as appears by a reference thereto in the following agreement, a copy of which agreement is made a part of this bill as Exhibit "B."

And your orators further represents that the restriction touching the sale that no one should bid without depositing a large amount of bonds or cash was for the purpose of defeating and competition, and was a

part of the general conspiracy to obtain the said road for a nominal consideration.

Your orators further show that, on the 9th day of July, 1860, the said purchasers, claiming to act under the railroad law of Indiana, proceeded to unite themselves and claim to act as a corporation, under the name of the Cincinnati and Chicago Air Line Railroad Company, and to hold all the property of said former road, sold as above, under the mortgage aforesaid, subject to a certain prior mortgage to said Carlisle and Varnum, date' February 25, 1852, and said pretended company still hold and operate said railroad, making large sums thereby. Profert is hereby made of said record of foreclosure and sale. And the plaintiffs further aver, by way of amendment, that it is given out that, afterwards,
19 to wit, on, &c., said Cincinnati and Chicago Air Line Railroad Company consolidated with and took the name of the Chicago and Great Eastern Railway Company, which consolidation was made in furtherance of the scheme to defraud your orators and other stockholders of their road, as above described. With the full knowledge of the fraudulent sale of which they complain the plaintiffs makes said Chicago and Great Eastern Railroad Company a defendant hereto. They further, as excuse for delay, aver that the road was leased to Wright and Co. until 1862, which was considered as barring action till that time, when the war came on, engrossing all attention and damaging all business.

And your orators further show that the decree and sale upon said mortgage of said road, &c., were corrupt, fraudulent, and void, and known to be so by the purchasers and present holders of said road being the corporation defendant to this bill.

Your orators aver that said road at the time of its sale for $30,000, only $25,000 of which was paid, was of the value of four millions ($4,000,000) of dollars, subject to the first mortgage; that the pretended decree was entered by a fraud upon the court, pract'ced by the managers and pretended committees, self-constituted, and fraudulently pre-
20 tended to the court to be appointed by the corporation, it being agreed among them, with the view of getting the road themselves and cheating and defrauding the stockholders and creditors, that a decree should be entered for the sale, and a sale made among themselves and for their common benefit, enough being paid among them to settle the lawyer's fees.

Your orators further represent that by said decree and sale great injustice has been done the stockholders and creditors of said road, who have been defrauded out of at least four million ($4,000,000) of dollars.

Your orators, therefore, pray that said fraudulent sale and decree may be set aside and held for naught, and the stockholders of the former corporation be remitted back to their rights and ownership and possession of the road, the said corporation being still existing but disorganized and in abeyance, the same being taken from the possession of its present fraudulent owners.

And your orator' further pray that they may be permitted to redeem the road from the mortgagers on the first mortgages, and will the court grant such other and further relief as may be meet.

Your orators further pray that your honors will grant the writ of subpœna, issuing out of and under the seal of this court, to be directed to said defendants John Brandt, Frederick Schuhardt,
21 Joseph E. Young, Martin L. Bundy, Solomon Meredith, William D. Judson, Amos Tenney, George B. Ripley, Joseph B. Varnam, Henry Morgan, Urial A. Murdock, John H. Thompson, Charles K. Ham-

ilton, and Pierre Chateau, commanding them and each of them, by a certain day and under a certain penalty therein inserted to appear before your honors in the circuit court of the United States for the district of Indiana, and then and there answer the premises, and abide the order and decree of the court.

HENDRICKS, PERKINS, AND HORD,
Solicitors for Pl'ff.

Your orators, by leave of the *writ*, by way of amendment showing why their bill was not earlier brought, say that they knew the road was leased out of the power of the company, as they supposed, until 1862; that they know it was sold on mortgage sale as above set forth, except that they were entirely ignorant of the fraudulent acts, arrangements, and combinations above set forth, by which it brought about and executed and a new organization formed; that they confided in their officers and supposed all was fairly done: that on the sale the corporation ceased practically to exist, and their officers concealed from the stockholders the frauds perpetrated, and they had no organ to act in the premises; furthermore, that, in 1865 they learned from divers sources, the war having previously directed attention from the matter, that frauds
22 had been perpetrated, but particulars were not given; that the stockholders were scattered in several States, and had to be consulted and measures taken to raise men and money to investigate the transactions; that this was done as expeditiously as disorganized, scattered stockholders could do it; agents were employed to investigate facts and consult counsel, and as soon as the work could be accomplished of investigating the frauds, which *was* industriously concealed, of raising funds and consulting counsel, to wit, early in 1866, a bill was filed and process issued to the marshal, &c.

H. P. H.

And attached to said bill are the papers following:

23 Whereas a suit is now pending in the United States court of the district of Indiana to foreclose a certain mortgage or deed of trust made and executed by the Cincinnati, Logansport & Chicago Railroad Company, dated April 1st, 1853, to George Carlisle, George W. Riggs, & George A. Hamilton, trustees;

And whereas, in the progress of said suit, a claim has been set up by George B. Ripley and William D. Judson, as lessees and contractors in possession of said railroad for moneys expended by them in the construction of a portion of said road, which claim the said court has decided to be entitled to equitable consideration;

And whereas negotiations have been and are now pending with said railroad company, and the other parties to the suit, which it is believed will result in said company and the other parties consenting to a decree being entered at either the March or May terms, 1860, of said court for the sale of said road;

And whereas, in consideration of the premises and stipulations hereinafter specified to be performed on the part of the parties hereto, representing a portion of the bonded interest herein provided for, the said William D. Judson, George B. Ripley, and Amos Tenney, who assigned, sold, and transferred all their right, interest, and claim of, in, and said railroad, rolling-stock, machinery, and all other, its fixtures and ap-
24 purtenances, and all other claims, dues, and demands against said corporation to Frederick Schuchardt, Frederick C. Gebhard,

and Urial A. Murdock, by a certain instrument bearing even date herewith, and which for greater certainty is made a part of this:

Now therefor', for the purpose of adjusting and settling the conflicting claims and interests of the bondholders holding bonds issued under the mortgage executed to said Carlisle, Riggs, and Hamilton, trustees as above stated, and the said lessees and contractors above named, it is agreed between such of the bondholders interested in *in* the premises as are subscribers hereto, and said Judson, Ripley and Tenney, to settle and adjust the claims of the respective parties in the following manner and upon the terms and conditions herein set forth and stated:

1st. A decree shall be entered at said March or May term, 1860, providing for the payment of the claim of said lessees and contractors out of the price or consideration for which said road may sell, previous to the payment of any portion of the claims of the said bondholders, or providing that said claim shall be declared a specific prior lien on that portion of the road constructed by them, or in such other form as
25 the court may deem equitable to the rights of other parties not herein specified.

2d. Upon the sale of the road under said decree, it shall be bought by a party to be named by the parties hereto for the bondholders subscribers hereto.

3d. Immediately after the sale and purchase of said road, as aforesaid, a corporation shall be formed under the laws of Indiana, composed of said bondholders, parties hereto, and such associates as they may elect, with a capital stock of one million dollars, created under the provisions of said laws, and provided said stock can be legally created and issued without involving a personal liability, and to the bondholders hereto, and thereupon said bondholders, parties hereto, shall issue to said Judson, Ripley and Tenney, or order, certificates of stock to the full amount of the capital stock of the company, except one share of $100 to each of the parties who may join in forming the corporation, to which corporation said road shall be conveyed conformably with the laws of said State of Indiana.

In forming said corporation, the directors, up to a majority of one, shall be named by said bondholders, subscribers hereto, and the remainder of the directors shall be named by said Judson, Ripley
26 and Tenney; a majority of the whole stock of the corporation shall also be deposited in the hands of Frederick Schuhardt, Frederick C. Gebhard, and Urial A. Murdock to be held by them in trust, up to the time that the control of the said bondholders over the earnings of the road shall terminate, (as provided in sec. 12,) in order that said bondholders may control for the necessary time the election of the directors of the corporation; but it is agreed & understood that during the period for which said stock is so held in trust at the annual elections for directors, the parties named for directors by said Judson, Ripley & Tenney, up to one less than a majority of the whole board, shall be voted for by the holders of said stock so held in trust; and it is also hereby agreed that said Judson, Ripley and Tenney shall have the right to nominate annually all the officers of the corporation, excepting the agent of the bondholders, as specified in section 12, and the superintendent of the road, both of whom shall be appointed by the board of directors.

4. Simultaneously with the conveyance of said road to said corporation, said corporation shall execute and deliver to a committee to be named by said bondholders, parties hereto, $1,600,000, (one million & six

27 hundred thousand dollars,) of first-mortgage 7 $_{0}^{10}$ bonds, payable in 30 years, interest payable semi-annually, together with a mortgage duly executed by said corporation to secure said bonds, the form of the mortgage and bonds to be adopted and approved by said Schuchard, said Gebhard, and said Murdock, bondholders, parties hereto, prior to the execution of which mortgage & bonds, the claim of said lessees and contractors so assigned, as aforesaid, shall be cancelled of record if necessary, so that it shall not in any manner effect the perfect title to the premises, or to be a lien prior to the bonds and mortgages proposed to be made as aforesaid.

5. $513,000 of the bonds named in the preceding section shall be set apart and applied for a settlement with the Cincinnati & Chicago Railroad Company and others, defendants in said foreclosure suit, and other parties, as may be agreed upon.

6. The remainder of said $1,600,000 bond, shall be disposed as follows:

The several holders of bonds issued under the mortgage now in process of foreclosure, as before stated, who were subscribers to a loan of $80,000, negotiated in September, 1859, by the Chicago & Cin-
28 cinnati R. R. Co., (the line of whose road extends from Logansport to Valparaiso, Indiana,) and for payment of freights and charges on said company's iron, shall be entitled to exchange old bonds for new bonds, excluding all past-due coupons to the extent of eight times the amount of cash subscribed, and which they have paid or shall pay towards said $80,000 loan, it being, however, agreed and understood that they are only to receive $800 in new bonds for every $1,000 in old bonds.

7. Such of said bondholders, resident in England, as contributed towards a loan of $35,000, negotiated by said Chicago and Cincinnati R. R. Co., in June, 1859, and which said company paid on ac. of the purchase-money for 5,700 tons of rails, bought of William Wheelwright, esq., of London, shall be entitled to exchange old bonds for new bonds, excluding all past-due coupons to the extent of eight times the amount of cash subscribed and paid by them towards said loan of $35,000, it being, however, agreed and understood that they are only to receive $800 in new bonds for every $1,000 in old bonds.

8. Such of said bondholders, as, prior to the day on which said road is to be sold under said decree, shall invest an amount equal to
29 12½ per cent. on the par of the bonds they may hold in the purchase of the 1st mortgage bonds of the Chicago and Cincinnati R. R. Co., at the rate of 75 per cent. of their par value, shall be entitled to exchange their present bonds for the new bonds, excluding all past-due coupons, it being, however, agreed and understood that they are only to receive $800 in new bonds for every $1,000 in old bonds.

9. If out of said issue of $1,600,000(0) bonds, any surplus shall remain in consequence of any of the bondholders in interest not assenting or conforming to the conditions herein agreed upon, or from any other cause, the said surplus of bonds shall belong to said Judson, Ripley and Tenney, upon their paying towards the purchase-money for said road the amount which will be going to said non-assenting bondholders.

10. The first semi-annual interest coupons shall be payable on said bonds two years after said road is sold and the title passed to the new company, and the new bonds are issued, but the surplus earnings of the road, during said period for which no interest is to be paid on said bonds, shall be applied to the purchase of machinery and the improvement of the property.

The bridge and track lying over the Wabash River, up to the
30 point of junction with the roads centering at Logansport, on the north bank of said river, shall be built and paid for out of the earnings of the road, and shall belong to the new corporation, and be covered by the mortgage given to secure the new issue of bonds.

11. Upon the maturity and payment of the interest on the bonds, any surplus earnings remaining, which, with due regard to the condition and preservation of the property, can be applied to the payment of dividends on the stock, shall be so applied.

12. The holders of the new issue of bonds shall have their own agent on the premises, who shall receive and control the earnings and direct the disbursements and expenditures of the road, until the semi-annual interest on the new issue of bonds has been consecutively paid, when the right of the bondholders to elect directors, and their control over the earnings of the road shall cease, and the said stock, so placed in trust, as provided in sec. 3, shall be surrendered to said Judson, Ripley and Tenney.

13. A fair and proper compensation for the agent of the bondholders, and the officers of the corporation, shall be paid monthly out of the earnings of the road.

31 14. All legal travelling and other expenses heretofore incurred by any of the parties hereto in reference to said foreclosure suit, since the appointment of William J. Ball, as receiver, shall be repaid out of the earnings of the road, or proceeds of the sale of the road as soon as practicable.

15. All the bondholders shall be notified of the decree for the sale of the road immediately after it is rendered, and of the terms herein proposed upon which they can exchange their present bonds for those to be issued by the new company. The bondholders in England shall have sixty days' notice of their right to exchange their bonds under the provisions of this agreement, from the date of mailing in New York.

16. It is agreed that Mr. Warren Murdock shall act as the agent and representative of the bondholders, subscribers hereto, in connection with said Judson, Ripley, and Tenney, in reference to the foreclosure suit, obtaining the compromise decree, organizing the new company, issuing the new bonds, and all other matters pertinent to the business, until sixty days after the sale of the road, provided the decree for sale of the road is obtained at the March or May term, 1860, said Mur-
32 dock's compensation to be two hundred and fifty dollars per week, and travelling expenses from and after February 23d, 1860, to be paid out of the nett earnings of the road as soon as practicable, and to be subsequently assessed with the other expenses incurred upon the bondholders pro rata. It is, however, understood and agreed that the parties hereto do not guaranty to said Warren Murdock the payment of said amount, but he is to look to the property for the payment of the same.

17. This instrument shall in no event be construed to bind the bondholders, who are subscribers hereto, beyond the amount of bonds they severally hold as specified opposite their signatures.

In testimony whereof the parties to these presents, have hereunto interchangeably set their hands and seals this fifth day of March, 1860.

N. B. It is understood that Mr. Murdock herein, represents the interest of Mr. P. Chouteau, jr., and that of his late partner, Mr. San-

ford's estate, equally with his own, in all about $128,000 of the bonds named.

33

FRED'K SCHUHARDT. [L. S.]
FRED'K C. GEBHARD. [L. S.]
U. A. MURDOCK. [L. S.]
W'M D. JUDSON. [L. S.]
GEO. B. RIPLEY. [L. S.]
AMOS TENNEY. [L. S.]

In presence of—
MOSES B. MACLAY.

STATE OF NEW YORK,
City and County of New York:

I, Moses B. Maclay, a commissioner of the State of Indiana, resident in the city of New York, duly commissioned and qualified to take the acknowledgements of de'ds, &c., do hereby certify that, on this sixth day of March, 1860, before me, came personally Frederick Schuhardt, Frederick C. Gebhard, Urial A. Murdock, William D. Judson, George B. Ripley, and Amos Tenney, known to me to be the individuals described in, and who executed, the foregoing instrument, and they severally acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[SEAL.]

MOSES B. MACLAY,
Indiana Commissioner in the City of New York.

34 GEORGE CARLISLE
vs.
CINCINNATI & CHICAGO RAILROAD COMPANY. } No. 4.

The decree in this cause having been entered, by agreement, which agreement is based upon certain agreements made between the parties to this suit, upon the faith that those agreements will be faithfully and punctually carried out, which agreements have been signed and approved: Now, if it shall happen that the purchaser of said road shall not faithfully and promptly carry out said agreements then the sale shall not be confirmed, but both the sale and the decree shall stand for naught, and as though never entered.

M. T. STEWART,
Att'y for Pl'ff & Beneficiaries.
J. P. USHER,
Att'y for J. W. Wright.
J. H. WHITE,
P. Sullivan', Att'y.
D. W. VOORHEES,
Att'y for C. K. Hamilton.
J. C. WRIGHT,
Att'y for Carlisle.
MORTON & BICKLEY.
CALEB B. SMITH,
Att'y for C. & C. R'r'd Co.

35 Know all men by these presents that we, Pierie Chauteau, jr., Uriel A. Murdock, Fred. C. Gebhard, John H. Thompson, and Henry Morgan, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Warren Murdock our and each of our

agent and attorney, to attend any sale of the Chicago & Cincinnati Railroad mortgaged premises, property, rights, and franchises mentioned and referred to in a decree of the circuit court of the United States for the seventh judicial circuit and district of Indiana, made on the 14th day of March, 1860, in a cause wherein George Carlisle, trustee, etc., is the complainant, and the Cincinnati & Chicago R'r'd Co. and others are defendants, whenever and wherever the same may be offered for sale under and by virtue of said decree, to bid therefor the sum of twenty-five thousand dollars; and if it becomes necessary, by reason of competition at the sale, to secure the purchase of said railroad premises, &c., then to bid therefor to the further extent of three hundred and fifty thousand dollars, being the amount awarded to Ripley & Judson for their claim, mentioned in said decree, which claim has been assigned by them to Schuchardt, Gebhard, Murdock, in trust, for the purpose of enabling them to purchase said railroad, &c., and carry into effect
36 the compromise agreements heretofore made among the parties interested therein; and also to bid to the further extent of one hundred and fifty thousand dollars, making in all the aggregate amount of such bids $525,000, and to purchase in our names, or in the name or names of any or either of us, said railroad mortgaged premises, property, rights, and franchises referred to in said decree, at a price not exceeding said sum of $525,000, and in our names, and on our behalf, to comply with and confirm all the provisions of said decree in relation to the bidding at the sale thereof, the purchase of said mortgaged premises to be made as aforesaid, for the purpose of carrying into effect the compromise agreements heretofore made among the parties interested therein, according to their spirit and intent, giving, & granting, &c., unto our said agent and attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as we might or could do if personally present.

In witness whereof we have hereunto set our hand and seals the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and sixty.

37 FRED. C. GEBHARD.
U. A. MURDOCK.
P. CHOTEAU, JR.,
P'r JOHN H. THOMPSON, *Att'y.*
HENRY MORGAN.
JOHN H. THOMPSON.

Sealed and delivered in the presence of—
JOHN J. KAVANAGH.

STATE OF NEW YORK,
City and County of New York, ss:

25TH APRIL, 1860.

MOSES B. MACLAY,
Ind'a Comm'r, City of New York.

38 NEW YORK, *2d March*, 1860.

CHARLES K. HAMILTON, Esq.

SIR: We have this day executed an agreement with you, relating to the affairs of the Cincinnati and Chicago Railroad Company, to which we refer. In addition to the stipulations and provisions of that con-

tract, we hereby agree with you, in consideration of your having entered into the same as follows:

1st. That, if we can arrange with the directors, or parties interested, to satisfy their demands in relation to the endorsed debt, so as to secure the decree of foreclosure in the suit pending, Carlisle vs. The Company and others, for a less amount than one hundred thousand dollars of the new issue of bonds, which is the amount proposed to be issued to said directors for the said purpose, that the difference in bonds made by such reduction shall be issued and delivered to you instead of to the said directors, and we will use our endeavors, in good faith, to effect the settlement with them for a less amount than 100,000$ to secure to you the benefit thereof.

2. We also agree to effect a discontinuance of the suits against
39 you as a stockholder in said company, in favor of W'm Butler & another, Judge Watson being the attorney in said suits.

3. We will use our endeavors to effect a settlement with Mr. Peabody for the balance which he claims to be due him, by means of the bonds provided for that purpose; and we will also endeavor procure to be surrendered to you the bills originally given for iron, drawn by George Alfred Hamilton, and accepted by C. K. Hamilton &c., which are held by U. A. Murd*relt* as vouchers against the Cincinnati & Chicago Railroad Company, under a certain award made by Mr. Holbrook.

Yours, &c.

W'M D. JUDSON.
GEO. B. RIPLEY.
A. TENNEY.

40 Memorandum of agreement betwen the parties hereto, that is to say, Geo. B. Ripley, William D. Judson, and Amos Tenney, acting for themselves and others, parties of the first part, and Charles K. Hamilton, of the city of New York, of the second part.

Whereas the parties of the first part, above mentioned, are contractors, lessees, and creditors of the Cincinnati & Chicago Railroad Company, as set forth in their answer in the suit hereinafter mentioned; and whereas a suit is pending in the circuit court of the United States for the district of Indiana, in *in* which George Carlisle is complainant, and the said railroad company and others, including the parties hereto, are defendants, which suit is brought to foreclose a mortgage, executed by said railroad company to the said George Carlisle, George A. Hamilton, and George W. Riggs, jun'r, to secure the payment of £250,000, st'l'g, of the bonds of said railroad company, then issued, and the further sum of £50,000 to be thereafter issued, as provided in said mortgage, and—

Whereas the party of the second part, above named, is also a bond holder and creditor of the same company, and has filed his cross-
41 bill and answer in said court, in said suit, to protect his interest therein, and the said parties of the first part have also filed their answer therein, and it is desirable to put an end to litigation and to agree upon some equitable adjustment of the difference between the parties hereto, so that the foreclosure of the mortgage, and the sale of the road, and the reorganization of the affairs of the company may be perfected as hereinafter provided and agreed, as expeditiously as practicable, and the parties hereto have agreed on certain terms and conditions, which they deem of mutual interest, and desirable to be carried into effect; & whereas, the parties of the first part, acting for themselves and other parties, who are bondholders, and who are associated with them, con-

template the purchase of the said premises, and the sale thereof under the decree, which may be rendered in the said suit, and the reorganization of a new corporation out of said premises for their mutual interest and protection:

Therefore, it is agreed, that if a decree shall be entered in the said suit at the March or May term of the court, authorizing the said road to be sold in accordance with the prayer of the bill of complaint in said suit, and for the payment of the bonds secured by the said sterling mortgage, so called, and for other purposes which may be ex-
42 pressed in the decree, that the road and property included in, and covered by said mortgage shall be sold in pursuance of said decree; that it shall be bid in or purchased by an agent or agents in behalf of the su'scribing and agreeing bondholders, and the contractors or lessees of said road, Messrs. Ripley, Judson & Tenney, (who are parties also to said suit, and have filed their answer therein;) and that a new corporation shall be formed by the purchaser or purchasers at such sale as provided by law in the State of Indiana.

That said corporation shall create a mortgage-lien on the entire line of road from Richmond to Logansport, including all the property acquired by virtue of the sale and purchase aforesaid, (subject only to the existing lien of a mortgage for $300,000 on twenty-seven miles of the road between Newcastle and Richmond.) which new mortgage shall be for a sum not exceeding $1,600,000, and shall provide for the issue of coupon bonds in sums of $1,000 each, or in smaller denominations, as may be required, payable in thirty years after date, and bearing interest not exceeding seven p'r c't p'r an'm, payable half-yearly, and the first semi-annual payment of interest to be made on said bonds
43 on the 1st day of July, 1862, or the 1st day of January, 1863.

Said issue of bonds of $1,600,000 shall be used by the said new corporation in paying and discharging such debts and liabilities of the Cincinnati, Logansport, and Chicago Railroad, and of the Cincinnati and Chicago Railroad Company, as may be assumed and agreed to be paid by the purchaser or purchasers of said road, or by the new corporation intended and agreed to be formed, or herein provided.

And it is agreed that, out of the said issue of $1,600,000 of bonds as above provided, two hundred and seventy-eight thousand shall be issued and set apart for the following uses and purposes, that is to say:

One hundred and sixty-eight thousand ($168,000) to be issued and delivered to E. G. Hamilton, of the city of New York, or his assigns.

Seventy thousand ($70,000) dollars to be issued and delivered to Cha's K. Hamilton, in the city of New York, or his order, in exchange for the same amount of sterling bonds (exclusive of coupons) of the said Cincin'ati, Logansport and Chicago Railroad Company, now held by the said Hamilton or his assigns.

44 Forty thousand ($40,000) to be delivered to Cha's Butler, of the city of New York, in escrow and in trust, to be delivered to George Peabody, esq., of London, in payment of and satisfaction of his claim against the said Cha's K. Hamilton; the said bonds to be delivered to said Peabody on the order and with the consent of said Hamilton. And it is expressly agreed that no asses'ment shall be made on said bonds, or any of them, or required of said Hamilton or his assignee, or of said Peabody, or any of said bonds above mentioned, ($278,000,) nor shall the said parties, or any of them, be subject to, or required to pay, any cost or legal expenses on account of the same, growing out of the foreclosure of said mortgage, or otherwise. And further, the said amount of two hundred and seventy-eight thousand

($278,000) dollars of bonds shall be issued and delivered to the said parties as above provided, in the city of New York, as soon as practicable after the sale of said road and the formation of the new corporation, as contemplated and provided in this agreement; and—

Whereas, the said parties hereto of the first part, the said Ripley, Judson & Tenney, are contractors upon and lessees of said road,
45 and claim to be entitled to a prior claim and *and* lien on the whole or certain portions of the same until their claims be satisfied, as set forth in their answer in said suit now pending as aforesaid in the circuit court of the United States for the district of Indiana, for the foreclosure of said sterling mortgage, it is agreed between the parties hereto, that, for the amount which may be awarded to the said Ripley, Judson, & Tenney, they shall and will receive, in payment therefor, the common stock to be created and issued by said new company, for such an amount as may be agreed upon between them and the purchaser or purchasers of said road, or the new corporation, so that the same may be placed after, and junior the said mortgage bonds to be created and issued to said Hamilton and others, as aforesaid.

And, in consideration of the said issue and delivery of the said bonds amounting to $278,000, as aforesaid, to the said Hamilton and others, the said Cha's K. Hamilton agrees and stipulates to withdraw his opposition to said proceedings for the foreclosure of said sterling mortgage, and consents that such decree of sale be entered in said suit as to the court may seem proper, and to unite and co-operate with other bondholders and parties in interest, and particularly the parties here-
46 to, in the measures and proceedings which are deemed *and* expedient and necessary to re-organize the affairs of said railroad company in the manner and on the terms hereinbefore expressed; and the said Hamilton agrees to hold the judgment which was rendered in his favor at the November term of the said circuit court for the district of Indiana for the sum of $156,243 28, besides costs, for the use and benefit of the new corporation, to be formed by the purchasers of said railroad as aforesaid, and also *the* surrender or assign to such party as the said new corporation (after it shall have been formed) shall designate or appoint, the shares of stock held by him in the said Cincinnati & Chicago Railroad Company. Witness the hands and seals of the parties hereto this 2d March, 1860.

(Signed) W. D. JUDSON.
AMOS TENNEY.
GEORGE BRADFORD RIPLEY.
CHA'S K. HAMILTON.

The undersigned, being bondholders of the Cincinnati and Chicago Railroad Company under the sterling mortgage, so called, assent, so far as they are interested in the premises, to the within agreement between Geo. B. Ripley and others, of the first part, and to the provision thereon made for the issue and delivery of two hundred and seventy-eight
47 thousand dollars (part of the $1,600,000) issue of new bonds to be made as therein provided, to the parties therein named. Dated this 2d March, 1860.

(Sig') SCHUCHARDT & GEBHARD.
(") U. A. MURDOCK.
(") M. MORGAN & SON.

(A.)—*Copy of lease to John W. Wright & Co.*

Know all men that the Cincinnati and Chicago Railroad Company, a lawful corporation of the State of Indiana, for and in consideration of the covenants hereinafter contained, do hereby give, grant, bargain, sell, and lease, transfer, and convey unto John W. Wright and Company, their said road as now located, commencing at the town of Richmond, Wayne County, Indiana, and running through the counties of Wayne, Henry, Madison and Tipton, Howard and Cass, and terminating near the south bank of the river Wabash, opposite the town of Logansport, and at the point where the iron is now laid, which conveyance shall be understood to include their road-bed, iron, spikes, crossties, franchises, rolling-stock, cars, machinery of whatsoever description. Their right of way, gravel pits, depot grounds and houses, side-tracks and turnouts, together with all personal property situated
48 along the line of the road here leased, and all materials used in operating the same, and the full power and privileges to use and control the same as fully as said railroad company have or can use the same.

The lease and conveyance above specified are made upon the conditions and for the consideration following, and for no other considerations whatever. The said John W. Wright & Co. hereby agree and bind themselves to complete the construction and lay the balance of the iron necessary between the town of Anderson and Kokomo, and fully equip and stock the road from the town of Richmond aforesaid, to the south bank of the Wabash River, opposite the town of Logansport; to ballast the same in the most complete manner, and to provide all materials at their own proper for the construction, equipment, and repair thereof so long as it shall remain in their charge; and the following stipulations in relation to said contract are now mutually agreed to between said railroad company and said John W. Wright & Co.:

1st. The said John W. Wright & Co. shall have immediate possession and exclusive control of said railroad and all personal property and machinery hereby conveyed to them, and may hold the same for
49 the full term of five years commencing on the first day of January, 1857, and until they shall be reimbursed the money by them expended in the manner herein provided. They shall operate the road exclusively for their own profit, without interference from said company or any person claiming under it.

2d. The said Wright & Co. agrees to take care of and protect from sale or sacrifice, all of the first-mortgage bonds of said company, whether issued in the present corporate name, or that of the Newcastle and Richmond, or the Cincinnati, Logansport, and Chicago Railway Company, which have been hypothecated or pledged at sixty cents on the dollar, and under that sum of the par value said bonds; but said Wright & Co. agree that they will protect the bonds held by Thompson & Forman, of London, or the bonds originally pledged to them, in whose hands soever they may be, without regard to the sum or value at which such bonds were hypothecated, and take up all notes given for which said bonds were hypothecated, and deliver said notes to the company.

And all bonds so taken up or protected, they agree to hold for one year from the first day of January next, and if said company shall not, at the expiration of that time, repay them the money so ex-
50 pended, with six per cent. interest thereon, then said Wright & Co. may sell them for the best price they can procure, after hav-

ing given said company sixty days' notice of their intention to sell, as well as of the time and place of sale, and after repaying themselves of the money so expended in taking care of and protecting said bonds from sale and sacrifice, the *the* surplus, if any remain, shall be paid over to the said railroad company. They may, however, within the year aforesaid, elect to take said bonds at the price and at the rate of sixty cents on the dollar, and in that event, shall not be liable to account to said company for any farther sum, but they shall have no claim against the company for any debt to secure which said bonds have been hypothecated and their election to take said bonds shall extinguish the debt.

3. The said John W. Wright shall, at their own cost, erect all such station-houses and depots as may be necessary to transact the business of the road in a safe and convenient manner; they may also, at their own cost, redeem any of the company's iron rails which may be subject to liens, and shall be required to pay nothing more for them. They shall provide all iron spikes, claws, and other materials necessary
51 to furnish the road in the manner herein required, at their own expense.

The said Wright & Co. hereby agree and bind themselves to pay all interest on the mortgage bonds which have been issued on the road hereby leased to them, and sold in good faith, which shall accrue from and after the first of January next. They also agree to pay the interest on the sum of two hundred and sixty-five thousand dollars of the second-mortgage bonds which the company have agreed to place in the hands of Miles Murphy and John Hunt from and after the first day of January, 1858, (and on all other bonds from and after the date of their sale by the company or any other person authorized to sell the same.) And it is hereby agreed that the said railroad company may place in the hands of John Hunt, of Richmond, Indiana, the sum of *of* one hundred and eighty-five thousand dollars of their second mortgage bonds to be used by him in the payment of the company's endorsed debt upon which the present officers and directors are liable as set forth in the deed of trust made by said railroad company to said Hunt, and here referred to. And it is expressly agreed that the debts enumer-
52 ated in *in* said deed of trust, and none other, shall be paid out of the fund therein provided, and that there shall be an executive committee appointed, who alone shall have power to certify the debts.

And it is agreed that said bonds shall not be used at less than par value in the payment of said debts. The company will also place eighty thousand dollars in the hands of Miles Murphy of Newcastle, Indiana, to be held by him as security for the claims of Morrison, Blanchard & Co., which amount of eighty thousand dollars of second-mortgage bonds shall be used by him in the payment of said debt of Morrison, Blanchard & Co. in the same manner and subject to the same restrictions as are herein imposed on said Hunt, and this agreement with said Murphy on condition that he will release all claim he may have on certain iron rails which were transferred to him by said company for purpose of being applied to said debt of Morrison, Blanchard & Co.

The residue of the second-mortgage bonds, or that portion of them which are hypothecated as the property of the company, said Wright & Co. may take up and hold as their own property, paying nothing more for them than the several sums for which they may have been pledged.
53 5th. All the personal property of the company above named shall be transferred, absolutely, but as their liens on three locomotives, held by the Boston Locomotive Company, and by Richard Norris & Son,

and also a lien on certain cars held by Rogers & Wiggins, of Hagerstown, Indiana, which said Wright & Co. assume, the payment and the amount of said liens shall be deducted from the appraised value of the said property herein provided for.

And all the personal property hereby conveyed shall be appraised by two disinterested persons, one of whom shall be selected by said Wright & Co., and one by the railroad company, and in case of a disagreement they two shall select a third person, and when said road shall be surrendered to the company at the expiration of the lease, the property then on hand, whether purchased by said Wright & Co. or not, shall be again appraised in like manner, and the difference in value shall be settled by the party against whom the difference appears.

6th. All debts of the company which the said Wright & Co. may pay or arrange, except as herein otherwise provided for, shall companies agree to receive the 2d-mortgage bonds in payment at par for
54 such freight and passengers as may pass from the former to the latter, then their rights under this contract shall cease, and they shall forfeit all claims on money expended on said road.

10. It is understood that the officers and directors of said railroad shall, at all times, be allowed to pass and repass over the same free of charge, and the president may, in his discretion, grant passes to such other persons as it may be customary to pass free of charge.

11th. The bonds held by Hunt and Murphy as trustees, and Wright & Co. in their own right, shall alone be paid over to the two railroad companies on account of earning, and none others shall be disposed of—those held by Hunt and Murphy having priority.

12th. The surplus which the railroad may be entitled to receive on account of their hypothecated first-mortgage bonds shall be applied as follows:

1st. In the payment of over-due coupons on bonds which fall due before first of January, 1857.

2nd. To the payment of whatever may be due John W. Wright on his contract for work done on that part of the road lying be-
55 tween Kokomo and Logansport.

3d. That class of debts owing by the company, on which the present or former officers or directors of the company are liable as endorsers.

4th. If there shall be any surplus remaining, then the same shall be applied to such other debts as the company may direct.

13. The said Wright & Co. agree to finish the road with all convenient speed, and bind themselves to have the cars running on the whole line leased to them as early as the first day of April next.

14. In consideration of the premises aforesaid, the said railroad company agree to pay said Wright & Co. for the faithful fulfilment of the second covenant and stipulations on their part the sum of five hundred thousand dollars, with interest thereon at six per cent. per annum, in five years from the first day of April next, or from the time when the first regular passenger train shall go through on the road; to secure which sum, and such other sums as may be from time to time expended by said Wright & Co. in the payment of the debts of said company,
56 as herein authorized, the said company declare their said road, rolling stock, machinery, and all other personal property aforesaid to be in mortgage. And it is expressly agreed and understood that said Wright & Co. shall retain full and complete possession and control of said road, and all the property mortgaged, for and during the full term of five years, and until the expenditures made by them, as

herein authorized, shall be fully paid to them, without the molestation or interference of said company, or any one claiming under them. They shall have the exclusive right to employ all officers and agents necessary to the successful operation of the road, to fix their own time-tables and tariff for freight and passengers, to contract for carrying the mails, and to receive, collect, and disburse all of the revenue of the road; and all the issues and profits thereof shall be theirs, and all damages arising from operating thereof, and all other expenses of whatever kind incident to the operation thereof, shall be paid by them.

In testimony whereof the president has hereto signed his name, and the secretary signed his name and affixed the seal of said company, as by order of the board, on the 16th day of October, 1856, and the said John W. Wright & Co. have hereunto set their hand the same date above written.

57 The Cincinnati & Chicago R. R. Co., by
J. A. JAMES, *Pres.*
JOHN W. WRIGHT & CO.

Attested by—
C. RICHARDS,
Sec'y pro tem.

STATE OF OHIO,
Hamilton County, ss:

Personally appeared before the undersigned, a notary public for the county aforesaid, J. A. James, president of the said Cincinnati & Chicago R. R. Co., and acknowledged the signing of the same to be his voluntary act and deed, for the purposes herein mentioned.

Witness my hand and notarial seal the 16th day of October, 1856.
SAMUEL STOKES, JR.,
Notary Public.

B.

58 Whereas a certain instrument of agreement has been this day executed between John W. Wright, of the one part, and William D. Judson, acting for himself, and George B. Ripley and Amos Tenney, of the other part, for the purpose of settling, compromising, and adjusting the claims of said John W. Wright against the Cincinnati and Chicago Railroad Company, and against said company's road and its rolling stock, machinery, and all other its fixtures and appurtenances:

And whereas, by said instrument of agreement, it is provided that said Wright shall be paid seventy thousand dollars in the first-mortgage bonds at par, to be issued on said bond after it is sold and purchased and rebonded, as provided in said instrument of agreement:

Now, it is further provided and agreed between said Wright, of the one part, and said Judson, acting for himself and said Ripley & Tenney, of the other part, as follows:

The said Wright hereby sells, assigns, transfers, sets over, and conveys to said Judson, Ripley & Tenney, jointly, fifty thousand dollars of said bonds, out of the said seventy thousand dollars in bonds.

59 And the said Judson, Ripley & Tenney, hereby sell, assign, transfer, set over, and convey to Jehu S. Elliott, of Newcastle, Indiana, the sum in bonds, also fifty thousand dollars in the first-mortgage bonds of the Chicago & Cincinnati Railroad Company, and one-tenth part of the whole capital stock to be issued and created by the

new company, which shall purchase and own the railroad of the Cincinnati and Chicago Railroad Company after it is sold in pursuance of the decree for its sale now of record in the United States court for the district of Indiana, which said decree provides that said road shall be sold at the city of Richmond, Indiana, on the 13th day of April, 1860; the said bond and stock to be held by said Jehu T. Elliott in trust, as guaranty, protection, pledge, and security to said Wright that said Judson, Ripley and Tenney shall do and perform the several acts, matters, and things which, by the terms and provision of this instrument they hereby agree to do and perform, namely:

They agree to pay all debts and liabilities of John W. Wright, John W. Wright & Co., J. B. Curtis & Co., and John Greene & Co., now outstanding, contracted for the construction of said *bond*, or for materials used in the same, or the purchase of bonds of said road, or for
60 money borrowed, or on bills sold to raise money or any matter under said lease and contract made by John W. Wright & Co. with said railroad company on the 16th October, 1856, or for the purchase of the stock of the Eaton & Hamilton Road.

All paper given in name of John Green & Co. shall be paid within nine months after said road is sold, and all other debts contracted for the Nevada store, for goods placed therein, shall be paid within nine months after the road is sold.

The paper of John W. Wright & Co., and J. B. Curtis & Co., on which said Wright procured security by endorsement of William Wright, Ja's W. Dunn, and John Greene, or any other person, so far as said paper was used for any purpose connected with said lease and contract, or for the purchase of the stock of the Eaton & Hamilton Road, shall be paid within eighteen months from the sale of the road; but nothing shall prevent said Judson, Ripley and Tenney from defending themselves or the endorsers against all liability on said paper at the cost of said Judson, Ripley and Tenney.

All debts for construction or materials used on the road under said lease and contract, due and contracted in Indiana, are to be paid
61 within twelve months from sale of the road.

Said Judson, Ripley and Tenney are to have five years from date of the sale of the road to pay the debts contracted or due out of the State of Indiana, in the name of John W. Wright, John W. Wright & Co., or J. B. Curtis & Co.

In case the stipulations of this instrument are not performed by same Judson, Ripley & Tenney, to the injury of said Wright, then said Jehu T. Elliott, the trustee named in the instrument, shall proceed, on the request of said Wright, after thirty days' notice to said Judson, Ripley and Tenney, to sell the said bonds and stock, or as many as may be necessary to fulfil said obligations, and no more, and so from time to time, as often as the same is violated, proceed in the same manner.

No claim shall be set up by John Greene & Co., or J. W. Wright & Son, for payments made out of the Nevada store. Nor is Green and Wright to account in any manner for said store, but all debts for goods or property which went into said store are to be paid by said Judson, Ripley and Tenney.

All liabilities of John W. Wright to William D. Judson, George
62 B. Ripley, and Amos Tenney, and all liabilities of said Judson, Ripley and Tenney to said Wright, growing out of the transactions of J. A. Wright & Co., and J. B. Curtiss & Co., are hereby mutually settled, canceled, and released, except that the claim of Rob't Ellis against said George B. Ripley for $3,000 and interest, shall be paid by

same. Wright or Ripley shall be released, and the claim of Michael G. Bright against said Judson for his acceptance of said Wright's draft for about $1,000 or $1,200, shall be paid by said Wright, or said Judson shall be released.

Any of the debts herein referred to, to be paid by same Judson, Ripley & Tenney, which after this date shall be paid by said Wright or Greene, shall be treated in their hands the same as if they had not been paid by them, but were held by the original creditors; but in no case shall said Judson, Ripley & Tenney be required to pay more than said Greene or Wright shall have paid, with interest. The payments made by same Wright to S. A. Hull, of Logansport, and to Geo. Gillespie, of Hagerstown, within the last month, shall be repaid to said Wright in the same manner that they would have to be paid to said Hull and Gillespie, if said payments had not been made.

63 Against any of the claims and demands above agreed to be paid by said Judson, Ripley and Tenney, the said parties agree to indemnify and leave harmless the said Wright and John Greene, and other securities and endorsers, and to pay all costs and expenses they may be at in defending the same.

The securities herein referred to shall be deposited with said Elliott by said Judson, Ripley & Tenney, as follows:

The $50,000 bonds of the Chicago & Cincinnati Railroad Company within fifteen days from this date.

And the $50,000 bonds and one-tenth part of the whole capital stock to be issued by the new company, who are to purchase the road when sold, and issue bonds and stock thereon as aforesaid, as soon as practicable after the sale. The power to vote on said stock deposited with said Elliott at all meetings of the stockholders of said company is expressly reserved to said Judson, Ripley & Tenney, unless the same is sold as herein provided.

Said Judson & Ripley further agree to surrender to said Wright
64 the title bond of John B. Curtis to one-third of the Tipton farm at Taborville, opposite Logansport, Cass Co., Ind., and assign it to him without recourse.

Indianapolis, March 20th, 1860.

(Signed) WM D. JUDSON,
GEO. B. RIPLEY,
By WM D. JUDSON, *Att'y.*
AMOS TENNEY,
By WM D. JUDSON, *Att'y.*

And upon their motion a rule is granted upon the defendant for the first day of the next term of this court, and this cause is continued.

And afterwards, to wit, at the November term of said court, on the 6th day of November, 1868, before the Honorable David McDonald, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant by Mr. Walker, its solicitor, and files a demurrer to the amended bill herein.

The Chicago & Great Eastern Railroad Company, Joseph E. Tenney, Amos Tenney, George B. Ripley, William D. Judson, and Henry Morgan, defendants to the above bill of complaint herein, by protestation, not confessing any of the matters and things in said bill to be true in the manner and form as the same are therein charged and set forth, do demur to said complainant's amended bill filed herein, and for cause

of demurrer shown that said complainants, by their said amended
65 bill, have not made such a case as to entitle them, in a court of equity, to any discovery from these defendants respectively, or any of them, or any relief against , or either of them, as to the matters contained in said amended bill, and any discovery made by these defendants, or any of them, touching the matters complained of in said amended bill, or any of them, cannot be of any avail to the said complainants, for any purpose for which discovery is brought against the said defendants, or any of them, nor entitle the complainants to any relief in this court touching any of the matters therein complained of, because they say that there is no equity in said amended bill of complaint, or in any matter or thing therein alledged or stated.

Wherefore, and for divers others, *your* causes of demurrer in said amended bill, these defendants do demur thereto. And they pray the judgment of this honorable court whether they shall be compelled to make any further answer to said amended bill, and they humbly pray to be dismissed hence with their reasonable costs in this behalf sustained.

McDONALD, ROACHE & WALKER,
Sol's for Defendants.

66 We, the undersigned counsel for the above-named defendants, certify that, in our opinion, the above demurrer is well founded in point of law.

McDONALD, ROACH & WALKER,
Counsel for Defendants.

Personally appeared in open court Edwin Walker, who, being duly sworn upon his oath, says that he is the agent of the above-named defendants, as well as one of the attorneys of recovery herein, and that he is intrusted, by said railroad company and the other defendants above named, with their defence herein, and that said demurrer is not interposed for delay, but because they believe the objections to said bill are well taken.

EDWIN WALKER.

Subscribed and sworn to this 6th day of March, 1868.

J. D. HOWLAND, *Clerk.*

And afterwards, to wit, at the November term of said court, on the 9th day of December A. D. 1868, before the Honorable David McDonald, judge, as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

67 Come now the defendants, by Mr. Walker, their solicitor, and re-file their demurrer herein to the amended bill in the words and figures following:

And afterwards, to wit, at the November term of said court, on the 22d day of January, A. D. 1868, before the Honorable David McDonald, judge, as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Ordered by the court that the above-entitled cause be continued.

And afterwards, to wit, at the May term of said court, on the 28th day of May, A. D. 1869, before the Honorable David McDonald, judge,

as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by counsel, and the defendants, by Messrs. Hendricks, Hord and Hendricks, his solicitors, and now files his demurrer in the words following, to the complainants bill of complaint, to wit:

And afterwards, to wit, at the May term of said court, on the 22 day of June, A. D. 1869, before the Honorable David McDonald, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties by their respective solicitors, and thereupon' his cause is submitted upon bill and demurrer and the court being
68 sufficiently advised, doth now sustain the said demurrer, and the complainant hath leave to amend his bill at any time before the next term.

And afterwards, to wit, at the May term of said court on the 4th day of June, 1870, before the Honorable David Davis, one of the judges aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now their parties, by their respective solicitors, and the plaintiffs having declined to amend their bill, on motion of the defendant, it is ordered, adjudged, and decreed that said bill be dismissed, and that the defendants recover of the plaintiffs their costs herein taxed at $.

And the plaintiffs pray their appeal to the Supreme Court of the United States, which is allowed upon their filing the usual appeal-bond in the sum of five hundred dollars ($500) to be approved by the court.

And afterwards, in said court, on the 17th day of August, A. D. 1870, the defendants now file their bond for an appeal herein in the penalty of $500, with George B. Rogers, David B. Laplow, F. Neave & Sons, and William Goodall, sureties, which is approved.

69 UNITED STATES OF AMERICA,
District of Indiana:

I, John Howland, clerk of the circuit court of the United States in and for the seventh judicial circuit and district aforesaid, do hereby certify that the foregoing is a full, true, and correct transcript of the record and proceedings in the cause above-entitled, as fully as the same remains in my office.

Witness my hand and the seal of said court, at Indianapolis, this 22d day of September, A. D. 1870.

[SEAL.] J. D. HOWLAND, *Clerk.*

(Indorsement on cover:) No. 530. Edward Harwood, D. M. March, W'm S. Sampson, Samuel Boggs, Robert Hamlin, Jacob Vore, James M. Price, Thompson Neares, David Huston, John Bots, James D. Lehmer, R. M. Moore, Moses White, W'm Goodall, B. Hager, J. L. Wayne, John L. Vaetner, appellants, vs. The Cincinnati & Chicago Air Line Railroad Company, John Brandt, F. Schuchardt, Joseph E. Young, M. L. Bundy, S. Meridith, et al. Indiana C. C. U. S. Filed 24th March, 1871.

SUPREME COURT OF THE UNITED STATES

EDWARD HARWOOD, D. M MARCH ET AL.

vs.

THE CINCINNATI & CHICAGO AIR-LINE RAILROAD COMPANY, JOHN BRANDT ET AT.

NO. 530c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

THOMAS A. HENDRICKS, FOR APPELLANT .

IN THE SUPREME COURT OF THE UNITED STATES.

EDWARD HARWOOD, D. M. MARCH, ET AL.
vs.
THE CINCINNATI & CHICAGO AIR-LINE RAILROAD COMPANY, JOHN BRANDT, ET AL.

No. 530c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

The complainants, as stockholders in the Cincinnati and Chicago Air-Line Railroad Company, brought their bill in chancery to set aside a judicial sale of the road which the company had constructed, because of fraud in obtaining the decree, and in the execution thereof. (Page 5, printed record.)

The defendants demurred to the bill (pages 23 and 24,) and the Court sustained the demurrer, and dismissed the bill. (Page 25.)

The only question in the case is, do the facts stated support the bill?

The bill shows that, bonds were issued and trust mortgages executed upon the road to the amount of about two million seven hundred and forty thousand dollars. In April, 1858, George Carlisle, the surviving trustee in one of the series of mortgages, filed his bill in the Circuit Court of the United States for the District of Indi-

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ana, to foreclose the mortgage. At that time the road was in the possession and under the management of lessees, who had agreed to meet the accruing interest upon the mortgages, and protect the company from any sale of the road. (See exhibit A, p. 18.)

After that lease was made, the parties to it, and others who became interested in the sale of the road, entered into a conspiracy to destroy the credit of the road, and to cause it to be sold, that they might become the purchasers under circumstances giving them great advantage. To that end they agreed that the lessees should disregard their obligation in the lease, and allow the interest on the bonds to remain unpaid, so that the mortgaged property should come to a sale. The parties to that corrupt arrangement subsequently profited by it. The decree of the Court was not the Court's own finding and judgment; it was the agreement of the same parties, and in furtherance of the same end. One of the provisions of the decree was, that the property should be purchased only by the holders of large quantities of the bonds, thus excluding all others than the bondholders.

The extraordinary arrangement between the conspirators, upon which the decree was based, is on pages 9, 10, 11, 12 and 13.

Document No. 4, page 13, shows that the interests of certain parties were to be attained, and if that should fail at the sale, the sale and the *decree* itself were to be void. That document was made in advance by the attorneys of the several parties then engaged in using the Court to obtain, for a nominal sum, a valuable property. The agreement in pages 9, 10, 11 and 12, not only provides for the decree, but also for the purchase of the property, and determines in advance how it shall be divided and shared among the parties, resulting in the destruction of the interests of the stockholders.

The parties so combining to obtain the road, appointed Warren Murdock their agent and attorney to attend the sale and buy in the property. Pp. 13 and 14, also p. 12, paragraph 16. Pursuant to the combination the decree was made for the sale of the road and all the property and rights covered by the mortgage, and the consumation of all these plans was attained on the 28th day of March, 1860, by the sale, under the decree, of all the property and rights, and the purchase made by the committee of the parties so combining, for the sum of thirty thousand dollars, of which sum only twenty-five thousand was paid. The money so paid was distributed among the lawyers in the case. Thus, for a nominal sum, as compared with the values disposed of, a large and valuable property

became lost to the complainants and their co-stock-holders. The facts so charged are admitted by the demurrer, and the bill charges that all such proceedings were had by said parties for the fraudulent purpose of obtaining the property for themselves at a nominal price.

The original bill in this case was filed on the 25th day of December, 1865, and the writ of subpœna was issued on the 29th day of that month. The amendment to the bill on page 9, shows that the stock-holders, represented in the case, were widely scattered over several States, that they were ignorant of the fraudulent practices set forth until 1865, and that the defendants and the officers of the company concealed the same from them; that as soon as their attention was attracted thereto, they proceeded to have the same investigated, and filed their bill at as early a day as was possible. The bill was filed within six years after the sale of the road, and being within the usual limitation at law, it can not be urged that the complainants, and those for whom they proceed, slept upon their rights, and can not now be heard. But could that objection be raised upon the demurrer to the bill, it is answered by the averment that the defendants concealed the important facts. The decree and sale were public, and it may be presumed were known to complainants, but it is to be presumed that they were ignorant of the combination to obtain the decree and sale, as that combination is shown by papers (the exhibits) in the custody of some of the defendants. The averment that these important facts were concealed from the stock-holders, is admitted by the demurrer. At the time the bill was dismissed, it did not appear that others than the parties to the fraudulent combination had become interested in the property. Hallett et al. vs. Collins, 10 Howard, 174.

Do the facts admitted by the demurrer show that the decree and sale were obtained by practices fraudulent as against the stock-holders? The road was in the custody of lessees, who were bound to save the stock-holders from the loss of their property by any failure to pay the interest. They agreed with the other defendants not to meet that obligation so that the interest might remain unpaid, with a view to a judicial sale. Could the lessees or those agreeing with them for such a purpose acquire any rights by the proceeding to the prejudice of the stock-holders? Would legal rights so acquired, not be held in trust for those whom they ought to have protected? At the time this corrupt combination was made, Ripley, Judson and Tenny, were the lessees, and required, by the terms of

the lease, to protect the stock-holders. That they were the lessees, see the agreement on page 9, and the "memorandum of agreement" on page 15. They were to gain great advantages by the proceeding which was to strip the stock-holders of their property. They were parties to the corrupt agreement on pp. 9, 10, 11 and 12. That agreement provided for a decree, page 10, paragraph 1. The road was to be bought in by a party to be named by them and the others, parties to the agreement. Paragraph 2.

Upon the sale a new corporation was to be created, with a capital stock of one million dollars, nearly all of which was to go to the lessees—paragraph 3. They were also to have a large control in selecting the directors and officers of the company—paragraph 5. They were also to have a contingent interest in a part of the new bonds which were to be issued—paragraph 9. Murdock and the lessees were to obtain the foreclosure, the compromise decree, the re-organization of the company, and the issue of the new bonds—paragraph 16, p. 12. The means resorted to by Judson, Ripley & Tenny to obtain the decree, and to remove all objection and hostility to the proceeding, is shown by the agreement with Charles K. Hamilton, one of the resisting defendants—p. 15. Hamilton agreed to withdraw his opposition to the proceeding, and to consent to the decree—p. 17.

The Directors could not so combine with others for the sale of the road, and acquire any rights adverse to the stockholders. Can their lessees, who hold under them, with an equal obligation to protect the stockholders, acquire any such rights for themselves and those who so combine with them?

In furtherance of the fraudulent intent and purpose, they obtained a decree for the sale of the property, but with a provision restricting the sale to such as held a large quantity of the bonds. This provision excluded competition and enabled the parties to purchase the property for the sum of thirty thousand dollars. Perhaps the sum paid was not so grossly inadequate that the sale would be set aside because of that alone; yet it would require but a mere irregularity on the part of the purchaser to induce the Court to set it aside. In this case there was much more than an irregularity. There was combination for a wrong purpose, to prevent competition.

The road was an important one, extending from the city of Richmond to the city of Logansport, in the State of Indiana, and the bill avers that it was of the value of four million dollars. Is it not most extraordinary that such a property should sell for no more

than enough to pay the lawyers in the case, and will any Court desire to sustain such a sale, surrounded by such circumstances as appear in this case? Had the Court overruled the demurrer and required the defendants to answer, it is possible that the interests of others, subsequent to the sale, and resting upon the sale, might have appeared; but now the only question in the case is between the stockholders on the one side, and a portion of the bondholders and the lessees on the other—between the stockholders and the parties to the combination—the purchasers at the sale.

The Court should have required the defendants to answer the bill. They should have answered these important charges; that the lessees, in violation of the provisions of their lease, and a portion of the bondholders, agreed together that the interest should not be paid, so that there might be a foreclosure and sale; that in advance they agreed how the property should be disposed of among themselves; they agreed upon the terms of the decree, and through their agents and attorneys had the decree so made as to enable them to accomplish the end aimed at; their attorneys so agreed, and further, that if the purpose failed, then the decree was to be void; that they controled the time and place of sale, and that the parties so combining became the purchasers of the property at a price wholly inadequate; and the result of the whole conspiracy and proceeding was, not the payment of a dollar of the indebtedness, not even the accrued interest, but only that the property changed legal ownership, one corporation substituted for another, the debt remaining and the stock representing the property, and owned by the complainants and others, was swept out of existence and new stock representing the same property was created, and was divided among the conspirators, according to their pleasure. Ought this not to have been answered?

Can parties so acquiring a very valuable property hold it as against the stockholders? It is submitted with confidence that the decree dismissing the bill ought to be reversed, to the end that upon answer made, the Court may render a decree upon the merits.

THOMAS A. HENDRICKS,
For Appellants.

SUPREME COURT OF THE UNITED STATES

EDWARD HARWOOD, ET AL.,

vs.

THE CINCINNATI & CHICAGO AIR LINE RAILROAD COMPANY, JOHN BRANDT, AND OTHERS.

No. 530c.

APPEAL FROM THE CIRCUIT AND DISTRICT COURT OF INDIANA.

J. E. McDONALD, A. L. ROACHE, EDWARD WALKER, for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

EDWARD HARWOOD, ET. AL.,
vs.
THE CINCINNATI & CHICAGO AIR LINE RAIL ROAD COMPANY, JOHN BRANDT AND OTHERS.

Appeal from the Circuit and District Court of Indiana.

BRIEF OF DEFENDANTS.

The complainants, claiming to be stockholders of the Cincinnati and Chicago Air Line Railroad Company, filed their bill in the Circuit Court of the United States for the District of Indiana, on the 25th day of December, 1865, on the Chancery side thereof, against the said Cincinnati and Chicago Air Line Railroad Company and others, seeking to set aside a decree of said Court, rendered, as the bill charges, "on the day of , 1860," in a certain suit wherein one George Carlisle, trustee in a certain trust deed or mortgage executed by said Railroad Company, was complainant, and the said Cincinnati and Chicago Railroad Company and others were defendants; and ask to set aside the sale made in pursuance of said decree and the cofirmatory order of the Court affirming said sale. The grounds alleged in the bill for this extraordinary interposition of equity jurisdiction, is, that the decree, sale and confirmation was the result of a fraudulent conspiracy between the complainants and certain of the holders of the bonds secured by the trust deed above referred to, and certain parties known by the style of John W. Wright & Co., in possession of the road under a lease executed by the Company; and that the President and Attorney of the Company participated in the fraud. This fraudulent conspiracy seems to have been, as shown by the bill, an agreement or understanding between

the lessees in possession and the other parties referred to, that they should suffer the credit of the road to run down by the failure to pay interest on the bonds, so as to render a foreclosure of the mortgage necessary. It is alleged that the lessees, with the means to do so, failed to pay the interest on the bonds, but it is not shown or pretended that these means had been realized from the road, or that they could have been so realized by any proper management, but it is averred in the bill that the said "second mortgage became "subject to foreclosure," and that Carlisle, the trustee, accordingly filed the bill of complaint at the time above stated. It also appears from the bill that the sale under this decree was made on the 25th day of March, 1860, but at what time the sale was confirmed does not appear; but it does appear that on the 9th of July, 1860, the purchasers of the road organized a new company and took possession of the property, and that from that time on, the whole property of the corporation was in the hands and under the control of this new company until it became consolidated with the Chicago and Great Eastern Railroad Company, which, on account of said consolidation is made a defendant to the bill. It is alleged that the whole property sold for no more than $30,000, but the exhibits attached to the bill show that it brought $1,600,000, and was sold subject to a mortgage lien on twenty-seven miles of the road of $300,000 and interest; so that in fact it was sold for about $2,000,000. The decree of the Court by which it was provided that payment of the purchase money might be made in certain bonds, and construction debts in certain proportions, is assailed in the bill as most fraudulent, although it is quite certain without some such adjustment the property could not have been made to realize one-fourth of the price obtained. But we quote the most singular part of this most singular bill, which is as follows:

"Your orators show that the decree of the Court for the sale of "said road was consented to, by their President and Attorney of the "said Railroad Company, without authority and in aid of the com- "bination to defraud the stockholders, and that he subsequently in "concert with directors of the company, who were in the above con- "spiracy, by fraud procured at an irregular meeting of seven, said "Attorney himself being one of them—of the thirteen directors a "pretended ratification of his acts on the 22d day of March, 1860." So that it appears from the bill that the act of the President and Attorney, (for we are to infer from it that the same person represented the Company as President and Attorney,) in consenting to the

decree and sale, was ratified by a majority of the Board of Directors, about the time the decree was entered, and no steps were ever taken to disaffirm the act of the board. It is true, it is averred that these directors were in the conspiracy, but who they were, or how they became connected with it, is not stated. There is one other feature in the bill to which we deem it proper to call the attention of the Court, that is, the alleged excuse for the long delay of the complainants in bringing their suit, and is to be found in the amendment attached to the original bill, over the initials H. P. H. In this, they say "that they *knew* the road was leased out of the power of the Company as *they supposed* until 1862;" that they knew it was sold on mortgage sale as above set forth, but did not know of fraudulent acts, etc. Then they knew it was sold on the mortgage two years before the lease would expire, which they say was to have protected it until 1862. They further state that the corporation ceased practically to exist, and that their officers concealed from the stockholders the frauds, and that furthermore in 1865, they learned from divers sources—the war having previously directed attention from the matter, that frauds had been perpetrated, etc.—and then it took them from the close of the war to the date of the filing of their bill to get their scattered forces together, and yet every fact of any importance in their bill is to be found in the records of their own company, in the decree of the Court, and in the file papers in the suit they assail. How the war prevented them from making the examinations necessary to the discovery of all they have placed in their bill, does not appear, as none of the claimants make any pretensions to military service or any other service connected with it; the only statement in that connection is that "the war had previously directed attention from the matter." The war has formed an excuse for many things, but the uses these complainants propose to make of it in this connection is quite novel, but as it did not begin until more than one year after their road and all its property was in the hands of a new company, under the force and effect of a judicial sale, it would seem not to be sufficient for them in this case. The bill with this amendment attached was demurred to by a portion of the defendants, and the demurrer was sustained by the Court, and the bill ordered to be dismissed. From the decree of the Court dismissing their bill, the complainants have appealed.

We insist that the decree of the Court below should be affirmed on three grounds:

First. The complainants do not show themselves entitled to

maintain any such suit. They are corporators, only, and as such, were not parties to the decree they now seek to set aside. Such a bill could only be filed by the corporation defendant, and it is no answer to this objection to say that those who represented the corporation at the time the decree was entered, participated in the fraud, for it is in the power of the stockholders to displace the unfaithful directors, and put others in their stead.

The following cases we think fully sustain this objection.

Smith *vs.* Hurd; 12 Met., 371.

Allen *vs.* Curtis; 26 Conn., 456.

Hersey *vs.* Neazie; 24 Maine, 9.

Van Allen *vs.* The Assessors; 3d Wall, 573.

Verplanck *vs.* Mercantile Insurance Co.; 1st Ed. ch. 84.

Second. The proper parties are not before the Court. Carlisle, the sole complainant in the original proceedings, is not made a party nor is any reason given why he is not. This alone would be sufficient grounds for dismissing the bill, for it will not be contended that the decree of a court can be set aside by a bill in chancery without having before the Court the party in whose favor it was entered, or his representatives. But in this case the complainants are asking to set aside the decree without either the original complainant or the principal defendant being before the Court.

Third. There is no diligence shown by the complainants, and no sufficient reason given for the long delay in instituting their proceedings. They seem to have become aware that five years' acquiescence in a decree and sale of property, would not do to risk a case in equity upon, and hence their attempt to account for it—with how much success we have in our statement of the facts embraced in the bill endeavored to show, and we are willing to rest this point on what we have already said. The Chancellor of the Court in which the original proceedings were had, did not think their excuse sufficient, and we feel quite certain this Court will concur with him in that opinion. We close our brief with one quotation from the appellants' brief—"It is submitted with confidence that the decree dismissing the bill ought to be"—affirmed.

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